IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 22/01/2004

Coram

The Hon'ble Mr. Justice P. SATHASIVAM
and
The Hon'ble Mr. Justice S.R. SINGHARAVELU

C.M.A. No. 498 of 1997

1. Kokila,
2. Kumar. .. Appellants/Petitioners.

-Vs-

1. A.C. Rayan,

2. The Divisional Manager,
New India Assurance Company Ltd.,
No.38, Anna Salai, Madras-2. .. Respondents/Respondents.

Appeal against Judgement and decree dated 11-4-1996 and made in M.C.O.P.No. 680 of 1992, on the file of Motor Accidents Claims Tribunal (Prl. Sub Judge) Chengalpattu.

Mr. A.N. Viswanatha Rao:- For Appellants.

^Mr. Padmanabhan for Mr. C. Ramesh Babu:-
For 2nd Respondent.

:JUDGMENT
(Judgment of the Court was made by P. Sathasivam, J.,)

Claimants in M.C.O.P.No. 680 of 1992 on the file of Motor Accidents Claims Tribunal, Chengalpettu are the appellants in the above appeal.

2. In respect of death of their daughter by name Sudha in a motor accident that took place on 17-7-1992, her parents prayed for a compensation of Rs.1,00,000/-. Before the Tribunal, mother of the deceased was examined as P.W.1 and one Natarajan as P.W.2, besides marking xerox copy of the post-mortem report and First Information Report as Exs P-1 and P-2 respectively. On the side of the owner and the Insurance company, no one was examined and no document marked to substantiate their defence. Based on the materials placed, the Tribunal, after holding that the accident was caused due to the rash and negligent act of the driver of the lorry in question, passed

an award of Rs.25,000/- with interest at 15 per cent from the date of petition till date of deposit. The Tribunal also directed both the owner and the insurer to pay the said amount. With regard to the disallowed claim of Rs.75,000/-, the claimants have preferred the present appeal.

3. Heard learned counsel for the appellants as well as contesting second respondent-Insurance Company.

4. The only point for consideration in this appeal is, whether the claimants are entitled for further compensation, as claimed in this appeal?

5. In view of the fact that the present appeal is for higher compensation, in the absence of any appeal by the owner and the insurer, it is unnecessary for us to go into the finding regarding negligence as well as liability.

6. In support of their claim for compensation, first claimant, mother of the deceased was examined as P.W.1. According to her, at the time of the accident, her daughter Sudha was aged about 10 years and studying in III Standard. It is further seen that she died at the hospital after two days of the accident. Post-mortem certificate has been marked as Ex.P-1. The claimants have prayed for a compensation of Rs.1 lakh. It is seen from the order of the Tribunal, which is under challenge, that there is no dispute on the side of the respondents with regard to negligence and liability. In spite of such factual information, it is not clear why the Tribunal has granted compensation of Rs.25,000/- only which is the minimum amount payable. There is no contra evidence with regard to the age of the deceased as well as the fact that she was studying in III Standard. Mr. A.N. Viswanatha Rao, learned counsel for the appellants by drawing our attention to the recent pronouncement of the Supreme Court in the case of Lata Wadhwa v. State of Bihar, reported in 2001 ACJ 1735, contended that in the light of the principles laid down therein, particularly with reference to the death of children between the age of 5 and 10 and above 10 years, the appellants are entitled for the balance amount of Rs.75,000/-. The case before the Supreme Court was filed for issuance of a Writ of Mandamus, ordering prosecution of the officers of the Tata Iron and Steel Company and their agents and servants, for the alleged negligence in organising the function, held on 3-3-198 9 in Jamshedpur and direct that appropriate compensation be provided to the victims by the State Government as well as the company. It is further seen that considering the number of deaths involved and number of persons injured, the Hon'ble Supreme Court requested Mr. Y.V. Chandrachud, former Hon'ble Chief Justice of India to look into the matter and determine the compensation payable to the persons concerned. Based on the report of the former Chief Justice of the Supreme Court, direction was issued for payment of compensation to various persons. Among other information, we are concerned with the amount determined/fixed in respect of the children between the age group of 5 and 10 years. In para 11 Their Lordships have observed thus:

"11.....So far as the award of compensation in case of children are concerned, Mr. Chandrachud has divided them into two groups, first group between the age group of 5 and 10 years and the second group between the age group of 10 and

15 years. In the case of children between the age group of 5 and 10 years, a uniform sum of Rs.50 ,000/- has been held to be payable by way of compensation, to which the conventional figure of Rs.25,000/- has been added and as such to the heirs of the 14 children, a consolidated sum of Rs.75,000/- each has been awarded....."

Apart from this, learned counsel for the appellants has also very much relied on the directions issued in the later part of the very same paragraph wherein Their Lordships, after accepting the report of the Hon'ble former Chief Justice, directed payment of Rs.2 lakhs in each case where the age of the children was below 10. It is also brought to our notice that for the children in the age group of 10 and 15 years, higher compensation was granted. In the light of the claim of the appellants and the reference made to the above said decision, we have carefully perused the factual details in the case before the Supreme Court. It is seen that for granting higher compensation, Their Lordships have taken note of the fact that in TISCO itself has a tradition that every employee can get one of his child employed in the company. It is further seen that because of the death of those children in the accident, they lost the employment opportunity in the light of the special provision provided by TISCO. Such is not the position in the case on hand. In such a circumstance, we are of the view that as observed by the Supreme Court in para 11, referred to above, and taking note of the fact that the deceased in our case was aged about 10 years and studying in III Standard, we are of the considered opinion that a compensation of Rs.50,000/- and a further amount of Rs.25,000 /- towards conventional figure would meet the ends of justice. Learned counsel appearing for 2nd respondent/Insurance company by pointing out their stand in the counter affidavit, filed before the Tribunal, contended that there cannot be any direction for payment of amount by the insurance company. We are unable to appreciate the said contention for the following reasons. First of all, except a mere statement in the counter affidavit, in the absence of insurance policy and disputing their liability either before the Tribunal or before this Court, no material was placed to substantiate their stand. In the absence of any evidence by examining their officer of the insurance company, the stand taken by the second respondent cannot be accepted and the same was rightly rejected by the Tribunal. In the absence of any material, We also reject the very same contention raised before us.

7. In the light of what is stated above, we modify the award of the Tribunal and grant compensation of Rs.75,000/- in favour of the appellants/claimants. The enhanced compensation of Rs.50,000 /- will carry interest at 9 per cent from the date of petition till date of deposit. Civil Miscellaneous Appeal is allowed in part to this extent. No costs.

R.B.

Index:- Yes.
Internet: Yes

To:-
1) The Motor Accidents Claims Tribunal (Prl.Subordinate Judge), Chengalpattu with records.

2) The Record Keeper, V.R. Section, High Court, Madras.